

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

and

STATE OF OHIO,

Plaintiffs,

v.

The Premcor Refining Group Inc., and
The Lima Refining Company.

Defendants.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"); and the State of Ohio, by and through its Attorney General, Marc Dann, at the written request of the Ohio Director of Environmental Protection ("Director"), alleges:

NATURE OF ACTION

1. This is a civil action brought against The Premcor Refining Group, Inc. and the Lima Refining Company (collectively "Defendants" or "Premcor"), pursuant to Sections 113(b) and 304(a) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7413(b) and 7604(a), for alleged violations of the CAA at the petroleum refineries operated by Defendants in Port Arthur, Texas, Lima, Ohio, and Memphis, Tennessee (the "Refineries").

2. This is a civil action brought against Lima Refining Company pursuant to Ohio's air pollution control laws, Ohio Rev. Code Chapter 3704 of the Ohio Revised Code and the rules

adopted thereunder (collectively referenced as "Ohio's air pollution laws") at the petroleum refinery operated by Defendant Lima Refining Company ("the Ohio Refinery") in Ohio. Ohio also alleges that Defendant Lima Refining Company has violated and is in violation of Ohio Administrative Code ("Ohio Adm. Code") Chapter 3745-31, which contains Ohio's federally approved Prevention of Significant Deterioration and Nonattainment New Source Review programs.

3. Upon information and belief, Defendants have operated and/or continue to operate the Refineries in violation of the following Clean Air Act statutory and regulatory requirements applicable to the petroleum refining industry: 1) Prevention of Significant Deterioration ("PSD"), Part C of Subchapter I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21, and Non-Attainment New Source Review, Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503, and the regulations promulgated thereunder at 40 C.F.R. § 51.165, Part 51, Appendix S, and § 52.24 ("PSD/NSR Regulations"); 2) New Source Performance Standards ("NSPS") promulgated at 40 C.F.R. Part 60, Subpart J; 3) Leak Detection and Repair ("LDAR") standards promulgated at 40 C.F.R. Part 60, Subparts VV and GGG, Part 61, Subparts J and V, and Part 63, Subparts F, H, and CC; and 4) National Emission Standards for Hazardous Air Pollutants for Benzene Waste Operations ("Benzene Waste NESHAP") promulgated at 40 C.F.R. Part 61, Subpart FF.

4. In Ohio Adm. Code Chapter 3745-31, Ohio has equivalent regulations, and/or requires new air contaminant sources to comply with the federal laws set forth in Paragraph 3.

5. Upon information and belief, the Ohio Refinery has been and is in violation of the federal laws set forth in Paragraph 3, and of Ohio air pollution control laws, including the

relevant portions of Ohio's state implementation plan ("SIP") which incorporates and/or implements the federal regulations cited in Paragraph 3.

6. The United States seeks an injunction ordering Defendants to comply with the above federal statutes and the regulations promulgated thereunder, and civil penalties for Defendants' past and ongoing violations. The State of Ohio seeks an injunction ordering Defendant Lima Refining Company to comply with the above statutes and regulations promulgated thereunder, and civil penalties for Defendant Lima Refining Company's past and ongoing violations of Ohio law.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Sections 113(b) and 304(a) of the CAA, 42 U.S.C. §§ 7413(b) and 7604(a). The State of Ohio invokes this court's jurisdiction pursuant to 28 U.S.C. § 1367 because its claims are so related to claims in the United States' action that they form part of the same case or controversy.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), and Sections 113(b) and 304(c) of the CAA, 42 U.S.C. §§ 7413(b) and 7604(c), because Defendant Premcor is doing business in this District.

NOTICE

9. Notice of the commencement of this action has been given to the State of Texas, the State of Ohio, and Memphis-Shelby County as required by Section 113(a)(1) and (b) of the CAA, 42 U.S.C. § 7413(a)(1) and (b). Ohio has provided notice of the commencement of this

action to the extent of its claims to the Administrator of EPA and to Defendants in accordance with the requirements of Section 304(b) of the CAA, 42 U.S.C. § 7604(b).

DEFENDANTS

10. Defendant Premcor, a Delaware corporation with its principle place of business in San Antonio, Texas, operates the refineries in Port Arthur, Texas and Memphis, Tennessee.

11. Defendant Premcor is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and applicable federal regulations.

12. Defendant Lima Refining, a Delaware corporation with its principle place of business in San Antonio, Texas, operates the refinery in Lima, Ohio.

13. Defendant Lima Refining is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and applicable federal and state law, regulations and rules promulgated under the CAA and/or contained in Ohio's air pollution laws.

STATUTORY AND REGULATORY BACKGROUND

14. The Clean Air Act established a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. See Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1). Ohio's air pollution laws, as codified in Ohio Rev. Code §3704.02, established a regulatory scheme designed to protect and enhance the quality of Ohio's air so as to promote the public health and welfare and the productive capacity of its population. Ohio Rev. Code § 3704.02.

15. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary

NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the criteria air pollutants in the ambient air. Ohio Rev. Code § 3704.02(D) gives the Director of the State of Ohio, Environmental Protection Agency ("Ohio EPA") the authority to promulgate rules establishing primary and secondary ambient air quality standards for criteria air pollutants consistent with and no more stringent than the NAAQS.

16. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQS. Ohio Rev. Code § 3704.02(E) gives the Director of Ohio EPA the authority to promulgate rules for achieving compliance with the NAAQS.

17. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an "attainment" area, and an area that does not is classified as a "non-attainment" area.

18. Pursuant to the CAA, 42 U.S.C. §§ 7661-7661f, and Ohio's air pollution control laws, the Ohio EPA is the executive agency of the State charged with the responsibility of administering and enforcing the provisions of Ohio air pollution laws.

Prevention of Significant Deterioration/New Source Review

19. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7479, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as

attainment areas. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to herein as the "PSD program." Ohio's PSD regulations are contained in Ohio Adm. Code 3745-31-11 through 20.

20. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as an attainment area unless a PSD permit has been issued. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 tons per year ("tpy") or more of any air pollutant. Ohio prohibits such actions in Ohio Adm. Code 3745-31-13(A).

21. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount. Ohio requires such demonstration under Ohio Adm. Code 3745-31-16.

22. As set forth at 40 C.F.R. § 52.21(i), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emission increase of any criteria air pollutant subject to regulation under the Act. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) as the potential to emit any of the following criteria air pollutants

at a rate of emissions equal to or in excess of the following amounts: for ozone, 40 tons per year of volatile organic compounds ("VOCs"); for carbon monoxide ("CO"), 100 tons per year; for nitrogen oxides ("NOx"), 40 tons per year; and for sulfur dioxide ("SO₂"), 40 tons per year. Ohio requires a PSD permit for such actions under Ohio Adm. Code 3745-31-11 through 20.

23. As set forth at 40 C.F.R. § 52.21(j), in an attainment area, a new major stationary source or an existing source after a major modification shall install and operate best available control technology ("BACT") for each criteria pollutant that the source has the potential to emit in significant quantities. Ohio Adm. Code 3745-31-15 also requires the installation of BACT.

24. Section 161 of the Act, 42 U.S.C. § 7471, requires state implementation plans to contain emission limits and such other measures as may be necessary, as determined under the regulations promulgated pursuant to the Act, to prevent significant deterioration of air quality in attainment areas. Ohio's PSD rules are contained in Ohio Adm. Code 3745-31-11 through 20.

25. Pursuant to 40 C.F.R. § 52.21(s), any owner or operator who commences construction or modification of a major source without applying for and receiving approval for such construction or modification is subject to an enforcement action. Under Ohio's air pollution laws, any owner or operator who commences construction or modification is subject to an enforcement action pursuant to Ohio Rev. Code § 3704.05 and § 3704.06.

26. Pursuant to 40 C.F.R. § 52.21(u), Ohio has been delegated authority to issue a PSD permit.

27. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions which direct states to include in their SIPs requirements to provide for reasonable progress towards attainment of the NAAQS in non-attainment areas. Section § 172(c)(5) of the Act, 42 U.S.C.

§ 7502(c)(5), provides that SIPs shall require permits for the construction and operation of new or modified major stationary sources anywhere in a non-attainment area, in accordance with Section 173 of the Act, 42 U.S.C. § 7503, in order to facilitate “reasonable further progress” towards attainment of the NAAQS. Ohio Rev. Code § 3704.02(E) gives the Director of Ohio EPA the authority to promulgate rules for achieving compliance with the NAAQS.

28. Section 173 of Part D of the Act, 42 U.S.C. § 7503, requires that in order to obtain such a permit the source must, inter alia: 1) obtain federally enforceable emission offsets at least as great as the new source’s emissions; 2) comply with the lowest achievable emission rate as defined in Section 171(3) of the Act, 42 U.S.C. § 7501(3); and 3) analyze alternative sites, sizes, production processes, and environmental control techniques for the proposed source and demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. Ohio has similar requirements in Ohio Adm. Code 3745-31-22 and also requires that any such facility comply with all applicable laws, including the CAA.

29. As set forth in 40 C.F.R. § 52.24, no person shall construct or modify a major stationary source in any non-attainment area, as designated in 40 C.F.R. Part 81, Subpart C, to which any SIP applies if the emissions from such source will cause or contribute to concentrations of any criteria air pollutant for which the area is in non-attainment, unless, as of the time of application for a permit for such construction, such plan meets the requirements of Part D, Title I of the Act.

30. A state may comply with Sections 172 and 173 of the Act by having as part of its EPA-approved SIP its own non-attainment new source review regulations, which must be at least

as stringent as those set forth at 40 C.F.R. § 51.165. Ohio's non-attainment new source review rules are contained in Ohio Adm. Code 3745-21 through 27.

31. Pursuant to Section 113(b)(1) of the CAA, 42 U.S.C. § 7413(b)(1), a violation of any requirement or provision of an applicable state implementation plan is a violation of the CAA.

32. Whenever any person has violated, or is in violation of, any requirement or prohibition of any SIP, the United States is authorized to commence a civil action for a permanent or temporary injunction and/or for a civil penalty.

33. Whenever any person has violated, or is in violation of, any requirement or prohibition of Ohio's SIP, the State of Ohio is authorized to commence a civil action for a permanent or temporary injunction and/or for a civil penalty, pursuant to Ohio Rev. Code § 3704.06.

34. Pursuant to Section 304(a)(3) of the CAA, 42 U.S.C. § 7604(a)(3), Ohio is authorized to commence a civil action against any person who is alleged to have violated Parts C or D of Title I of the CAA.

Clean Air Act New Source Performance Standards

35. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the EPA Administrator to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause, or significantly contribute to, air pollution that may endanger the public health or welfare.

36. Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), requires the EPA Administrator to promulgate regulations establishing federal standards of performance for new

sources of air pollutants within each category on the list published pursuant to Section 111(b)(1)(A). "New sources" are defined, at 42 U.S.C. § 7411(a)(2), as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source.

37. Pursuant to Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), EPA has identified petroleum refineries as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger the public health or welfare.

38. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), EPA promulgated New Source Performance Standards ("NSPS") for various industrial categories, including petroleum refineries. NSPS requirements for petroleum refineries are codified at 40 C.F.R. Part 60, Subpart J, §§ 60.100-60.109.

39. In accordance with 40 C.F.R. § 60.100(a) and (b), the provisions of 40 C.F.R. Part 60, Subpart J, apply to specified "affected facilities," including, inter alia, 1) Claus sulfur recovery plants that have a capacity greater than 20 long tons per day and that commenced construction or modification after October 4, 1976, and 2) all fluidized catalytic cracking unit ("FCCU") catalyst regenerators and fuel gas combustion devices that commenced construction or modification after June 11, 1973.

40. Except as provided for in 40 C.F.R. § 60.102(b), 40 C.F.R. § 60.102(a) prohibits the discharge into the atmosphere from any FCCU regenerator of 1) particulate matter in excess of 1.0 kg/1000 kg (1.0 lb/1000 lb) of coke burn-off in the catalyst regenerator, and 2) gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in

any one hour period.

41. 40 C.F.R. § 60.103(a) prohibits the discharge into the atmosphere from any FCCU regenerator of any gases that contain CO in excess of 500 parts per million ("ppm") by volume (dry basis).

42. Pursuant to 40 C.F.R. § 60.104(b), the owner or operator of each affected FCCU regenerator shall comply with one of the conditions set forth in 40 C.F.R. § 60.104(b)(1), (2), or (3).

43. 40 C.F.R. § 60.104(a)(2) prohibits sulfur recovery plants ("SRPs") subject to 40 C.F.R. Part 60, Subpart J, with reduction control systems followed by incineration from discharging in excess of 250 ppm by volume (dry basis) of SO₂ at zero percent excess air. 40 C.F.R. § 60.104(a)(2) prohibits SRPs subject to 40 C.F.R. Part 60, Subpart J, with reduction control systems not followed by incineration from discharging in excess of 300 ppm by volume of reduced sulfur compounds and in excess of 10 ppm by volume of hydrogen sulfide ("H₂S"), each calculated as ppm SO₂ by volume (dry basis) at zero percent excess air.

44. 40 C.F.R. § 60.104(a)(1) prohibits the burning in any fuel gas combustion device of any fuel gas that contains H₂S in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10. The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunction is exempt from the emission limit of 40 C.F.R. § 60.104(a)(1).

45. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated general NSPS provisions, codified at 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, that apply to owners or operators of any stationary source that contains an "affected facility"

subject to regulation under 40 C.F.R. Part 60.

46. 40 C.F.R. § 60.11(d) requires that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.

47. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of a NSPS applicable to such source. Thus, a violation of a NSPS is a violation of Section 111(e) of the CAA. Thus, a violation of an NSPS is a violation of Section 111(e) of the CAA. In Ohio Adm. Code 3745-31, Ohio requires that new air contaminant sources comply with the federal laws referenced in Paragraphs 35 through 46 of this Complaint.

48. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction and/or for a civil penalty.

49. Pursuant to Section 304(a)(1) of the CAA, 42 U.S.C. § 7604(a)(1), Ohio is authorized to commence a civil action against any person who is alleged to have violated any emission standard or limitation under the CAA. Pursuant to Ohio Rev. Code § 3704.05 and 3704.06, the Attorney General of Ohio may commence a civil action for injunctive relief and civil penalties for violations of Ohio's air pollution control laws.

Clean Air Act Leak Detection and Repair Requirements

50. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated New Source Performance Standards for Equipment Leaks of VOCs in Petroleum Refineries at 40

C.F.R. Part 60, Subpart GGG. Subpart GGG, in turn, incorporated many of the NSPS standards at 40 C.F.R. Part 60, Subpart VV. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated emission standards for hazardous air pollutants (“National Emission Standards for Hazardous Air Pollutants” or “NESHAPs”) at 40 C.F.R. Part 61, and NESHAPs for source categories at 40 C.F.R. Part 63. The relevant NESHAPs are found at 40 C.F.R. Part 61, Subpart J (for equipment leaks of benzene) and Subpart V (for equipment leaks), 40 C.F.R. Part 63, Subpart F (for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry), Subpart H (for organic hazardous air pollutants for equipment leaks), and Subpart CC (for hazardous air pollutants from petroleum refineries). In Ohio Adm. Code 3745-31, Ohio requires new air contaminant sources to comply with the federal laws referenced in this Paragraph.

51. The focus of a LDAR program is the refinery-wide inventory of all possible leaking equipment, the regular monitoring of that equipment to identify leaks, and the repair of leaks as soon as they are identified.

52. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard or any applicable National Emission Standard for a Hazardous Air Pollutant, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction and/or for a civil penalty.

53. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard or any applicable National Emission Standard for a Hazardous Air Pollutant, Section 304(a)(1) of the CAA, 42 U.S.C.

§7604(a)(1), authorizes the State of Ohio to commence a civil action for a permanent or temporary injunction and/or for a civil penalty. Pursuant to Ohio Rev. Code § 3704.05 and 3704.06, the Attorney General of Ohio may commence a civil action for injunctive relief and civil penalties for violations of Ohio's air pollution control laws.

**Clean Air Act National Emission Standards for Hazardous Air Pollutants
for Benzene Waste Operations**

54. Section 112 of the Clean Air Act, 42 U.S.C. § 7412, requires EPA to promulgate NESHAPS for each hazardous air pollutant ("HAP").

55. In March 1990, EPA promulgated national emission standards applicable to benzene-containing waste streams. Benzene is a listed HAP and a known carcinogen. The benzene waste regulations are set forth at 40 C.F.R. Part 61, Subpart FF (National Emission Standard for Benzene Waste Operations). Benzene is a naturally-occurring constituent of petroleum products and petroleum waste and is highly volatile. Benzene emissions can be detected anywhere in a refinery where petroleum products or waste materials are exposed to the ambient air.

56. Pursuant to the Benzene Waste NESHAP, refineries are required to calculate the total annual benzene ("TAB") content in their waste streams. If the TAB is over 10 megagrams, the refinery is required to elect a control option that will require the control of all waste streams, or the control of certain select waste streams.

57. Pursuant to Section 113(b) of the CAA, 42 U.S.C. §7413(b), the United States may commence a civil action for injunctive relief and civil penalties for violations of the Act. Pursuant to Ohio Rev. Code § 3704.05 and § 3704.06, the Attorney General of Ohio may

commence a civil action for injunctive relief and civil penalties for violations of Ohio's air pollution control laws.

FIRST CLAIM FOR RELIEF
(PSD/NSR Violations at FCCUs and Heaters and Boilers)

58. The allegations in Paragraphs 1 through 57 are hereby realleged and incorporated by reference as if fully set forth herein.

59. Defendants own and operate one or more FCCU regenerators at the Refineries.

60. Defendants own and operate heaters and boilers at the Refineries.

61. Upon information and belief, Defendants have modified certain FCCU regenerator at the Refineries, and have modified certain heaters and boilers at the Refineries.

62. Upon information and belief, each modification to each FCCU regenerator at the Refineries and to the heaters and boilers at the Refineries were a "major modification" within the meaning of 40 C.F.R. § 52.21(b)(2) to existing major stationary sources that resulted in a significant net emissions increase of: 1) NO_x, SO₂, PM, and CO from each FCCU regenerator; and 2) NO_x and SO₂ from the heaters and boilers.

63. Upon information and belief, each modification to the FCCU regenerator at the Lima Refinery and to the heaters and boilers at the Lima Refinery was a "major modification" within the meaning of the Ohio Adm. Code Chapter 3745-31, to existing major stationary sources that resulted in a significant net emissions increase of: 1) NO_x, SO₂, PM, and CO from each FCCU regenerator; and 2) NO_x and SO₂ from the heaters and boilers.

64. Since the initial construction or major modification of each FCCU regenerator and of the heaters and boilers at the Refineries, Defendants have been in violation of Section 165(a)

of the CAA, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, by 1) failing to undergo PSD/NSR review for each FCCU and the heaters and boilers, 2) failing to obtain permits, and 3) failing to install the best available control technology for the control of those pollutants for which a significant net emissions increase occurred.

65. Since the initial construction or major modification of the FCCU regenerator and of the heaters and boilers at the Ohio Refinery, the Ohio Refinery has been in violation of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the corresponding portions of the state implementation plan contained in Ohio Adm. Code Chapter 3745-31, by 1) failing to undergo PSD/NSR review for each FCCU and the heaters and boilers, 2) failing to obtain permits, and 3) failing to install the best available control technology for the control of those pollutants for which a significant net emissions increase occurred.

66. Unless restrained by an Order of the Court, these violations of the Clean Air Act and the implementing regulations and Ohio's air pollution control laws will continue.

67. Defendants are liable for the violations set forth above, and are subject to injunctive relief and civil penalties of up to: 1) \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, 42 U.S.C. § 7413(b); 2) \$27,500 per day for each violation occurring on or after January 31, 1997, and on or before March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 61 Fed. Reg. 69369 (December 31, 1996); and 3) \$32,500 per day for each violation occurring after March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 69 Fed. Reg. 7121 (February 13, 2004) for violations at the Port Arthur, Memphis, and Lima Refineries. In addition, the violations of the Lima Refining Company, as set forth above, also subject the Lima Refining Company to injunctive relief and

civil penalties of up to \$25,000 per day for each day of each violation pursuant to Ohio Rev.

Code § 3704.06.

SECOND CLAIM FOR RELIEF
(NSPS Violations at FCCUs)

68. The allegations in Paragraphs 1 through 67 are hereby realleged and incorporated by reference as if fully set forth herein.

69. Defendants are the "owners or operators," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of one or more FCCU regenerators at the Refineries.

70. Each FCCU regenerator at the Refineries is a "fluid catalytic cracking unit catalyst regenerator" as defined in 40 C.F.R. § 60.101(n), and a "stationary source" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

71. Each FCCU regenerator at the Refineries is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

72. Each FCCU regenerator at the Refineries is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

73. Each FCCU regenerator at the Refineries is subject to the emission limits set forth in 40 C.F.R. §§ 60.102(a), 60.103(a), and 60.104(b).

74. Upon information and belief, Defendants have violated 40 C.F.R. §§ 60.102(a), 60.103(a), and 60.104(b), and thus Section 111 of the CAA, by not complying with the emissions

standards set forth in those sections for each FCCU regenerator at the Refineries. In Ohio Adm. Code Chapter 3745-31, Ohio requires new air contaminant sources to comply with the federal laws referenced in Paragraphs 69 through 73 of this Complaint.

75. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

76. Defendants are liable for the violations set forth above, and are subject to injunctive relief and civil penalties of up to: 1) \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, 42 U.S.C. § 7413(b); 2) \$27,500 per day for each violation occurring on or after January 31, 1997, and on or before March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 61 Fed. Reg. 69369 (December 31, 1996); and 3) \$32,500 per day for each violation occurring after March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 69 Fed. Reg. 7121 (February 13, 2004) for violations at the Port Arthur, Memphis, and Ohio Refineries. In addition, the violations of the Lima Refining Company, as set forth above, also subject the Lima Refining Company to injunctive relief and civil penalties of up to \$25,000 per day for each day of each violation pursuant to Ohio Rev. Code § 3704.06.

THIRD CLAIM FOR RELIEF
(NSPS Violations at SRPs)

77. The allegations in Paragraphs 1 through 76 are hereby realleged and incorporated by reference as if fully set forth herein.

78. Defendants are the "owners or operators," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of one or more SRPs at the

Refineries.

79. Each SRP at the Refineries is a "Claus sulfur recovery plant" as defined in 40 C.F.R. § 60.101(i), and a "stationary source" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

80. Each SRP at the Refineries has a capacity of more than 20 long tons of sulfur per day.

81. Each SRP at the Refineries is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

82. Each SRP at the Refineries is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

83. Each SRP at the Refineries is subject to the emission limit set forth in 40 C.F.R. § 60.104(a)(2)(i).

84. Upon information and belief, Defendants have emitted into the atmosphere gases containing in excess of 1) 250 ppm by volume (dry basis) of SO₂ at zero percent excess air, or 2) 300 ppm by volume of reduced sulfur compounds, from each of the SRPs at the Refineries, in violation of 40 C.F.R. § 60.104(a)(2) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e). In Ohio Adm. Code Chapter 3745-31, Ohio requires new air contaminant sources to comply with the federal laws referenced in Paragraphs 78 through 83 of this Complaint.

85. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

86. Defendants are liable for the violations set forth above, and are subject to injunctive relief and civil penalties of up to: 1) \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, 42 U.S.C. § 7413(b); 2) \$27,500 per day for each violation occurring on or after January 31, 1997, and on or before March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 61 Fed. Reg. 69369 (December 31, 1996); and 3) \$32,500 per day for each violation occurring after March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 69 Fed. Reg. 7121 (February 13, 2004) for violations at the Port Arthur, Memphis, and Ohio Refineries. In addition, the violations of the Lima Refining Company, as set forth above, also subject the Lima Refining Company to injunctive relief and civil penalties of up to \$25,000 per day for each day of each violation pursuant to Ohio Rev. Code § 3704.06.

FOURTH CLAIM FOR RELIEF
(NSPS Violations at Flaring Devices and Heaters and Boilers)

87. The allegations in Paragraphs 1 through 86 are hereby realleged and incorporated by reference as if fully set forth herein.

88. Defendants are the "owners or operators," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of flaring devices and heaters and boilers at the Refinery.

89. The flaring devices and heaters and boilers at the Refineries are "fuel gas combustion devices" as defined in 40 C.F.R. § 60.101(g), and "stationary sources" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

90. The flaring devices and heaters and boilers at the Refineries are "affected

facilities" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and "new sources" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

91. The flaring devices and heaters and boilers at the Refineries are subject to the emission limit set forth in 40 C.F.R. § 60.104(a)(1).

92. Defendants have burned in the flaring devices and heaters and boilers at the Refineries fuel gas that contained H₂S in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10, in violation of 40 C.F.R. § 60.104(a)(2) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e). In Ohio Adm. Code Chapter 3745-31, Ohio requires new air contaminant sources comply with the federal laws referenced in Paragraphs 88 through 91 of this Complaint.

93. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

94. Defendants are liable for the violations set forth above, and are subject to injunctive relief and civil penalties of up to: 1) \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, 42 U.S.C. § 7413(b); 2) \$27,500 per day for each violation occurring on or after January 31, 1997, and on or before March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 61 Fed. Reg. 69369 (December 31, 1996); and 3) \$32,500 per day for each violation occurring after March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 69 Fed. Reg. 7121 (February 13, 2004) for violations at the Port Arthur, Memphis, and Ohio Refineries. In addition, the violations of the Lima Refining Company, as set forth above, also subject the Lima Refining Company to injunctive relief and civil penalties of up to \$25,000 per day for each day of each violation pursuant to Ohio Rev.

FIFTH CLAIM FOR RELIEF
**(NSPS Violations for Failing to Operate and Maintain
FCCUs, SRPs, Heaters and Boilers, and Flaring Devices
in a Manner Consistent with Good Air Pollution Control Practice)**

95. The allegations in Paragraphs 1 through 94 are hereby realleged and incorporated by reference as if fully set forth herein.

96. Upon information and belief, under circumstances that did not represent good air pollution control practices, Defendants have emitted unpermitted quantities of the following pollutants in violation of 40 C.F.R. § 60.11(d): 1) SO₂, PM, and CO from each FCCU regenerator at the Refineries; and 2) SO₂ from each SRP at the Refineries, and from the flaring devices and heaters and boilers at the Refineries. In Ohio Adm. Code Chapter 3745-31, Ohio requires new air contaminant sources comply with the federal laws referenced in this Paragraph.

97. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

98. Defendants are liable for the violations set forth above, and are subject to injunctive relief and civil penalties of up to: 1) \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, 42 U.S.C. § 7413(b); 2) \$27,500 per day for each violation occurring on or after January 31, 1997, and on or before March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 61 Fed. Reg. 69369 (December 31, 1996); and 3) \$32,500 per day for each violation occurring after March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 69 Fed. Reg. 7121 (February 13, 2004) for violations at the Port Arthur, Memphis, and Ohio Refineries. In addition, the violations of the Lima Refining

Company, as set forth above, also subject the Lima Refining Company to injunctive relief and civil penalties of up to \$25,000 per day for each day of each violation pursuant to Ohio Rev. Code § 3704.06.

SIXTH CLAIM FOR RELIEF
(Violations of LDAR Requirements)

99. The allegations in Paragraphs 1 through 98 are hereby realleged and incorporated by reference as if fully set forth herein.

100. Defendants are required under 40 C.F.R. Part 60, Subpart GGG, to comply with standards set forth at 40 C.F.R. § 60.592, which references standards set forth at 40 C.F.R. §§ 60.482-1 to 60.482-10, and alternative standards set forth at 40 C.F.R. §§ 60.483-1 to 60.483-2, for certain equipment at the Refineries in light liquid and gas and/or vapor service that was constructed or modified after January 4, 1983.

101. Pursuant to 40 C.F.R. § 60.483-2(b)(1), an owner or operator of valves in light liquid and gas and/or vapor service must comply initially with the leak detection monitoring and repair requirements set forth in 40 C.F.R. § 60.482-7, including the use of Standard Method 21 to monitor for leaks.

102. Pursuant to 40 C.F.R. Part 61, Subpart J, Defendants must comply with the requirements set forth in 40 C.F.R. Part 61, Subpart V, for certain specified equipment in light liquid and gas and/or vapor benzene service at the Refineries.

103. Upon information and belief, Defendants have failed 1) to monitor accurately VOC valves and other components at the Refineries as required by Standard Method 21, 2) to report leaking VOC valves and other components, and 3) to repair all leaking VOC valves and

other components in a timely manner. These failures constitute violations of 40 C.F.R. Part 60, Subparts GGG and VV, 40 C.F.R. Part 61, Subparts J and V, and 40 C.F.R. Part 63, Subparts F, H, and CC. In Ohio Adm. Code Chapter 3745-31, Ohio requires new air contaminant sources comply with the federal laws referenced in Paragraphs 99 through 102 of this Complaint.

104. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

105. Defendants are liable for the violations set forth above, and are subject to injunctive relief and civil penalties of up to: 1) \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, 42 U.S.C. § 7413(b); 2) \$27,500 per day for each violation occurring on or after January 31, 1997, and on or before March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 61 Fed. Reg. 69369 (December 31, 1996); and 3) \$32,500 per day for each violation occurring after March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 69 Fed. Reg. 7121 (February 13, 2004) for violations at the Port Arthur, Memphis, and Ohio Refineries. In addition, the violations of the Lima Refining Company, as set forth above, also subject the Lima Refining Company to injunctive relief and civil penalties of up to \$25,000 per day for each day of each violation pursuant to Ohio Rev. Code § 3704.06.

SEVENTH CLAIM FOR RELIEF
(Violations of Benzene Waste NESHAP)

106. The allegations in Paragraphs 1 through 105 are hereby realleged and incorporated by reference as if fully set forth herein.

107. Upon information and belief, the Refineries had a TAB of over 10 mg/yr, and

have been subject to the requirements of the Benzene Waste NESHAP set forth at 40 C.F.R. § 61.342.

108. Upon information and belief, Defendants have failed to comply with the requirements of 40 C.F.R. § 61.342 by exceeding the benzene quantity limits set forth therein, in violation of the Benzene Waste NESHAP regulations and the Act. In Ohio Adm. Code Chapter 3745-31, Ohio requires new air contaminant sources comply with the federal laws referenced in Paragraphs 107 and 108 of this Complaint.

109. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

110. Defendants are liable for the violations set forth above, and are subject to injunctive relief and civil penalties of up to: 1) \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, 42 U.S.C. § 7413(b); 2) \$27,500 per day for each violation occurring on or after January 31, 1997, and on or before March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 61 Fed. Reg. 69369 (December 31, 1996); and 3) \$32,500 per day for each violation occurring after March 15, 2004, pursuant to Section 113(b) of the CAA, Pub. L. 104-134, and 69 Fed. Reg. 7121 (February 13, 2004) for violations at the Port Arthur, Memphis, and Ohio Refineries. In addition, the violations of the Lima Refining Company, as set forth above, also subject the Lima Refining Company to injunctive relief and civil penalties of up to \$25,000 per day for each day of each violation pursuant to Ohio Rev. Code § 3704.06.

EIGHTH CLAIM FOR RELIEF
(State of Ohio Violation at Emissions Unit P025)

111. The allegations in Paragraphs 1 through 110 are hereby realleged and incorporated by reference as if fully set forth herein.

112. 40 C.F.R § 60.104(a)(1) requires that any refinery fuel gas combustion device not burn any fuel gas that contains more than 230 mg/dscm of hydrogen sulfide

113. 40 C.F.R § 60.101(d) defines fuel gas as any gas that is generated at a petroleum refinery and is combusted.

114. 40 C.F.R § 60.105(a)(3)(ii) requires that a continuous emission monitor ("CEM") be used to measure and record the SO₂ concentration by volume, on a dry basis at zero percent excess air, emitted to the atmosphere from the gas combustion device or the use of a CEM to monitor and record the hydrogen concentration in the fuel gas stream. If a SO₂ CEM is used, 40 C.F.R § 60.105(a)(3)(ii) requires that no more than 20 ppm of SO₂ be emitted to the atmosphere as an equivalent limit to the hydrogen sulfide standard.

115. The vapors from the benzene NESHAP sewer system are combusted in the thermal oxidizer. As such they are defined as refinery fuel gas and subject to the applicable requirements of 40 C.F.R. Part 60, Subpart J. Other already treated refinery fuel gas is used in the thermal oxidizer to combust the benzene sewer system vapors, due to the relatively low heat content of the sewer system vapors. Defendant Lima Refining Company currently operates the hydrogen sulfide CEM to monitor the other fuel gas generated by the refinery; however, the CEM does not monitor the emissions generated by emissions unit P025.

116. Ohio Rev. Code § 3704.05(C) prohibits any person from violating any terms or

conditions of any permit issued by the Director of Ohio EPA.

117. Ohio Rev. Code § 3704.05(J)(2) prohibits, in part, any person from violating any applicable requirement of a Title V permit or any permit condition, except for an emergency as defined in 40 C.F.R. § 70.6(g).

118. On June 24, 2004, a Title V permit was issued to Premcor, Defendant Lima Refining's predecessor, with the following special terms and conditions to ensure emissions unit P025 complies with applicable rules and laws: (a) a requirement that concentrations of SO₂ emissions emitted to the atmosphere not exceed 20 ppm, on dry basis at zero percent excess air; and (b) a requirement to conduct annual sulfur compliance tests to demonstrate compliance with the SO₂ concentration limitation.

119. Defendant Lima Refining Company violated the NSPS requirements, its Title V permit, and Ohio Rev. Code § 3704.05(C) and (J)(2) by allowing the benzene NESHAP sewer system vapors to exceed the 20 ppm limitation specified in its Title V permit. The violation occurred from at least May 18, 2005 (the date of the first compliance test) and continues.

120. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

121. The violations of the Lima Refining Company, as set forth above, also subject the Lima Refining Company to injunctive relief and civil penalties of up to \$25,000 per day for each day of each violation pursuant to Ohio Rev. Code § 3704.06.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States and the State of Ohio, respectfully request that this Court:

1. Order Defendants to comply immediately with the statutory and regulatory requirements cited in this Complaint and the corollary state acts;
2. Order Defendants to take appropriate measures to mitigate the effects of its violations;
3. Assess civil penalties against Defendants for each of the violations alleged herein;
4. Award the State of Ohio its costs of this action and attorney's fees; and
5. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

Date: 8 Aug. 2007

RONALD TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 14 August 2007

KATHERINE M. KANE
SCOTT D. BAUER
Trial Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-4133

MARC DANN
ATTORNEY GENERAL OF OHIO

Teri Finfrock
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street – 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

OF COUNSEL

PATRICIA WELTON

U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Mail Code: 6RCEA
Dallas, TX 75202-2733
(214) 665-7327

MARY T. McAULIFFE

U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd. (C-13J)
Chicago, IL 60604
(312) 886-6237

MARLENE TUCKER

U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9536